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December 22, 2003

S. BARTOW STRANG  
1882-1954

JOHN S. FLETCHER  
1879-1961

JOHN S. CARRIGER  
1902-1989

JOHN S. FLETCHER, JR.  
1911-1974

ALBERT L. HODGE  
1910-1997

THORNTON STRANG  
1920-1999

\*ALSO LICENSED IN GEORGIA  
\*ALSO LICENSED IN ALABAMA

Attention: Docket Room

The Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Docket No. 02-00562

Dear Chairman Tate:

In line with the Hearing Officer's extension of the December 19 filing deadline for EPB's prefiled testimony, we have enclosed for filing an original and 13 copies of the Prefiled Rebuttal Testimony of Harold DePriest.

If you have any questions about this filing, please do not hesitate to contact us.

Thank you.

Sincerely,



Mark W. Smith  
For the Firm

MWS:gb

Enclosures

cc: Mr. Harold E. DePriest  
Mr. Ronald N. Fugatt  
Counsel of Record

T.R.A. DOCKET ROOM  
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BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

RE: COMPLAINT OF US LEC OF :  
TENNESSEE, INC. AGAINST : Docket No. 02-00562  
ELECTRIC POWER BOARD OF :  
CHATTANOOGA :

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PRE-FILED REBUTTAL TESTIMONY AND EXHIBITS  
OF  
HAROLD E. DEPRIEST  
PRESIDENT AND CEO OF  
ELECTRIC POWER BOARD OF CHATTANOOGA

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1   **Q:    PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2   A:    My name is Harold E. DePriest. I am the President and Chief Executive Officer of the  
3        Electric Power Board of Chattanooga, which is an independent Board of the City of  
4        Chattanooga, Tennessee ("EPB"). EPB's principal office is located at 536 Market Street  
5        in Chattanooga, Tennessee.

6

7   **Q:    HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE AUTHORITY?**

8   A:    Yes, I have. I testified in support of EPB's Application for a Certificate of Convenience  
9        and Necessity, which the Authority granted by order dated May 10, 1999.

10

11   **Q:    WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12   A:    The purpose of my testimony is to respond to the pre-filed testimonies of Michael G.  
13        Moeller and Wanda G. Montano in this matter and, specifically, to US LEC's request that  
14        the Authority force EPB to offer its telecommunications services to the public using  
15        another name.

16

17   **Q.    PLEASE SUMMARIZE YOUR TESTIMONY.**

18   A.    US LEC has requested that the Authority force EPB to offer its telecommunications  
19        services to the public under a name that does not include "EPB." This request is flatly  
20        inconsistent with the legal structure of EPB, the manner in which EPB explained its  
21        anticipated operations in its certification docket, the manner in which all interested  
22        parties in the certification docket resolved cross-subsidy concerns arising from EPB's  
23        entry into the telecommunications market, the manner in which the Authority certificated

1 EPB, and the four and one-half years' operating experience and investment of EPB in its  
2 telecommunications operation.

3  
4 The EPB name and the EPB customer-centered philosophy are integral parts of who we  
5 are, but EPB has built this business on much more than simply the name of the electric  
6 system or its reputation in the community. EPB has invested nearly half a million dollars  
7 in marketing efforts for EPB Telecom over the past four and one-half years. EPB has  
8 spent many, many times that amount in capital expenditures in the Chattanooga  
9 community and in operating expenses associated with the start up and operations of its  
10 telecommunications division. EPB has built a telecommunications business over these  
11 past four and one-half years and, we believe, is making good progress towards true  
12 facilities-based competition. US LEC's request, if granted, would unjustifiably and  
13 unfairly harm EPB's telecommunications operations from a competitive standpoint; it  
14 would be administratively unworkable; and it would be very confusing to the public as  
15 well.

16  
17 The Authority should reject US LEC's request.

18  
19 **Q: PLEASE DESCRIBE THE ELECTRIC POWER BOARD.**

20 **A:** The Electric Power Board is an independent Board of the City of Chattanooga,  
21 Tennessee, a Tennessee municipal corporation. The Electric Power Board was originally  
22 created under Chapter 455 of the Private Acts of the 1935 Tennessee General Assembly  
23 and currently provides retail electric power to both business and residential customers in

1 the City of Chattanooga, most of Hamilton County, Tennessee, parts of Bledsoe, Bradley,  
2 Marion, Rhea, and Sequatchie Counties in Tennessee, and parts of Catoosa, Dade and  
3 Walker Counties in Georgia. The Electric Power Board's principal office is in  
4 Chattanooga, Tennessee.

5  
6 **Q: PLEASE EXPLAIN WHY YOU DESCRIBE THE ELECTRIC POWER BOARD**  
7 **AS AN "INDEPENDENT" BOARD OF THE CITY OF CHATTANOOGA.**

8 A: The Private Act Enabling Legislation, as amended, created the Electric Power Board as  
9 an operationally-distinct Board of the City of Chattanooga. The Board of the Electric  
10 Power Board is vested with the "exclusive management and control of the operation" of  
11 the Electric Power Board. The Board of the Electric Power Board consists of five (5)  
12 members whose replacements are subject to confirmation by the Mayor and City Council  
13 of the City of Chattanooga.

14  
15 **Q: DID EPB MAKE THE AUTHORITY AND THE INTERESTED PARTIES**  
16 **AWARE OF THE STRUCTURE OF EPB DURING THE CERTIFICATION**  
17 **PROCEEDING?**

18 A: Yes, I believe so. The prior two questions and my answers, immediately above, are  
19 verbatim extracts from my prefiled direct testimony dated September 3, 1998 at page 3,  
20 lines 1-22 that was submitted in support of EPB's application for a certificate of  
21 convenience and necessity.

1 **Q: HOW ARE EPB'S TELECOMMUNICATIONS OPERATIONS STRUCTURED?**

2 A: EPB created a separate telecommunications division to conduct EPB's  
3 telecommunications operations.

4  
5 **Q: IS EPB'S TELECOMMUNICATIONS OPERATION PART OF THE SAME**  
6 **ENTITY AS ITS ELECTRIC OPERATION?**

7 A: Yes. The Telecommunications Division and the Electric Division are both part of EPB.

8  
9 **Q: HOW WAS EPB'S APPLICATION FOR A CERTIFICATE OF CONVENIENCE**  
10 **AND NECESSITY STRUCTURED?**

11 A: The Applicant was the Electric Power Board of Chattanooga.

12  
13 **Q: WERE THERE ANY INTERVENORS IN THE CERTIFICATION**  
14 **PROCEEDING?**

15 A: Yes. A number of private parties, including BellSouth, the Tennessee Cable  
16 Telecommunications Association ("TCTA"), AT&T, MCI, Nextlink (now XO  
17 Communications), and ACSI intervened in the docket. The Consumer Advocate Division  
18 intervened in that docket as well.

19  
20 **Q. DID US LEC PARTICIPATE IN THE CERTIFICATION PROCEEDING?**

21 A. No. Although US LEC's responses to discovery requests in this docket indicate that US  
22 LEC received a certificate of convenience and necessity from the Authority on September

1 18, 1997 (Docket No. 97-00387), US LEC did not choose to participate in the EPB  
2 certification docket.

3  
4 **Q: DID THE PARTICIPANTS IN THE CERTIFICATION PROCEEDING**  
5 **ACKNOWLEDGE THAT EPB'S ELECTRIC SERVICE AND EPB'S**  
6 **TELECOMMUNICATIONS SERVICE WOULD BE PROVIDED BY EPB AS A**  
7 **SINGLE ENTITY?**

8 A: Yes. At page 5, lines 8-14 of the Rebuttal Testimony of William J. Barta dated  
9 September 18, 1998, which was submitted on behalf of TCTA, the following question  
10 and answer appears:

11 *Q: Will a separate subsidiary be established by EPB to provide*  
12 *telecommunications services?*

13 *A: No. EPB plans to establish a telecommunications division, not a separate*  
14 *subsidiary, for its telecommunications operations. Under the proposed*  
15 *arrangement, the telecommunications division will compensate the electric*  
16 *division for (and benefit from) the joint usage of the electric division's*  
17 *assets and services.*

18  
19 **Q: DID EPB RELY UPON THE MANAGERIAL, TECHNICAL, AND FINANCIAL**  
20 **ABILITIES OF ITS ELECTRIC OPERATIONS IN THE CERTIFICATION**  
21 **PROCEEDING?**

22 A. Yes, we relied very heavily upon EPB's electric system managerial, technical and  
23 financial abilities in support of our application.

1  
2 **Q: WAS EPB'S ELECTRIC SYSTEM INVOLVEMENT ADDRESSED AT THE**  
3 **OCTOBER 13, 1998 HEARING?**

4 A: Yes, it was. I believe that I was very clear in the following testimony that the operation  
5 would ultimately be an EPB operation and that we would take advantage of our  
6 experience in the electric business as we entered the telecommunications business:

7 *[W]e also had a big concern [with our new telecommunications operation]. Our*  
8 *concern was pretty simple. We've been in the electric business for 60 years. We*  
9 *have a very good reputation in our community. We didn't want to undertake*  
10 *something that would tarnish that reputation. If we're going to go into the*  
11 *telecommunications business, we want to do it right.*

12 . . . .  
13 *But there were two other issues that were really vital to us [in contracting with a*  
14 *third party service provider]. We wanted a company that would accept the*  
15 *Electric Power Board brand on the products and services we would offer. We*  
16 *wanted a company that would accept our control and ownership of the business.*

17 . . . .  
18 *If we're going to put the reputation of the Electric Power Board on the line, we*  
19 *want to control what we're doing. We wanted ownership, we wanted control.*

20 . . . .  
21 *But I'll tell you very plainly, this will be a Power Board venture. If you give us*  
22 *the authority to do this, we're going to run this company. We will make the*  
23 *decisions, we will set the prices, we will do the marketing. It will be our*



1                    *operation. The technicians that go into our customers' homes will be our people.*

2                    *That's our goal. We want to own the facilities, we want to own the processes.*

3  
4                    October 13, 1998 Hearing Transcript, Page 17, lines 8-16; Page 18, lines 17-21;  
5                    Page 19, lines 1-9; Page 21, lines 15-22.

6  
7                    At the time of the hearing, EPB anticipated entering into a contractual relationship with  
8                    another company that would provide switching service to EPB, so my testimony was  
9                    from that perspective. After that hearing, but before the Authority's decision, EPB's  
10                   relationship with the switch provider terminated, and this resulted in a change to EPB's  
11                   business model. Even though the business structure of EPB's telecommunications  
12                   operation changed, I believe that EPB was very clear with the Authority and the  
13                   intervenors that the telecommunications operations would be EPB's, that the products  
14                   would be EPB's branded products, that the reputation of EPB would be at stake in the  
15                   telecommunications venture, and that EPB would do the marketing for the  
16                   telecommunications operations.

17  
18    **Q:    IS THE STRUCTURE OF EPB REFLECTED IN THE MAY 10, 1999 ORDER**  
19                   **GRANTING EPB A CERTIFICATE OF CONVENIENCE AND NECESSITY?**

20    **A:**    Yes, it is. The name "EPB" appears numerous times throughout the May 10, 1999 Order.  
21                   Paragraph 1 on page 8 the Order states that "EPB is a Board of the City of Chattanooga,  
22                   Tennessee, a Tennessee municipal corporation." Paragraph 3 on page 8 of the Order  
23                   refers to the financial statements of EPB and indicates that EPB's Board of Directors

1 have demonstrated a commitment to provide financial support for EPB's  
2 telecommunications operation. Paragraph 4 on pages 8-9 of the Order refers to EPB's  
3 electric system managerial and technical ability. Paragraph 4 on page 9 of the Order  
4 references the "Telecommunications Division" of EPB, and ordering clause 1 on page 11  
5 of the Order states that "The Application of Electric Power Board of Chattanooga is  
6 approved."

7  
8 **Q: DID ANY OF THE INTERVENORS IN THE CERTIFICATION PROCEEDING**  
9 **ADDRESS EPB'S ELECTRIC SYSTEM INVOLVEMENT?**

10 A: Yes. In the oral summary of his pre-filed testimony, TCTA's Mr. Barta testified:

11 *The Electric Power Board of Chattanooga is seeking the TRA's approval for a*  
12 *certificate of public convenience and necessity. The EPB application is a*  
13 *different animal than the request of most prospective competitive local exchange*  
14 *carriers. Most new entrants are not affiliates of a regulated utility and have to*  
15 *compete under far different circumstances than EPB's telecommunications*  
16 *division.*

17 . . . .

18 *[M]ost new entrants cannot leverage off an existing subscriber base that's been*  
19 *built up over, I think Mr. DePriest said, 60 years of being in business. There's a*  
20 *substantial amount of goodwill and name recognition developed with those*  
21 *electric ratepayers. A new entrant can't come into the marketplace and build*  
22 *upon such an existing relationship.*

October 13, 1998 Hearing Transcript, at page 121, lines 14-21 & page 122, lines 8-15.

**Q: HOW DID THE PARTIES IN THE CERTIFICATION PROCEEDING ADDRESS CROSS-SUBSIDY CONCERNS?**

A: A primary area of concern in the certification proceeding was for EPB to establish appropriate accounting safeguards that would minimize cross-subsidization of EPB's telecommunications operations by its electric operation. While EPB contended that cross-subsidization concerns were within the jurisdiction of its electric system regulators (TVA and the EPB Board of Directors) rather than within the jurisdiction of the Authority, EPB negotiated with interested intervenors (primarily TCTA) to develop cost allocation guidelines and a code of conduct to address the potential for cross-subsidization.

At the conclusion of those negotiations, EPB and TCTA reached agreement on nearly every issue and jointly submitted a document entitled "Second Revised Proposed Conditions to Certificate of Public Convenience and Necessity to Ensure Statutory Compliance Filed on Behalf of the Tennessee Cable Telecommunications Association and Electric Power Board of Chattanooga" (the "Proposed Conditions"), a copy of which is attached to US LEC's Complaint in this matter. The Proposed Conditions documented the agreed upon terms and noted the remaining areas of disagreement. On page 3, the Proposed Conditions provide "the essential methods that EPB should adopt to properly

1 separate telecommunications from electric power accounting data, provide assurance that  
2 subsidization does not occur, and to properly allocate cost.”

3  
4 Other parties had the opportunity to participate in the development of the Proposed  
5 Conditions or to file testimony or briefs concerning cross-subsidy issues under T.C.A. §  
6 7-52-402, but chose not to do so following the filing of the Proposed Conditions.

7  
8 **Q: DO THE PROPOSED CONDITIONS IDENTIFY THE REGULATORY**  
9 **CONCERN WITH CROSS-SUBSIDIZATION?**

10 **A:** Yes. The Proposed Conditions state that the ultimate goals are to ensure just and  
11 reasonable rates for the electric system ratepayers, to discourage EPB from subsidizing  
12 its telecommunications operations by shifting costs to the electric system, and to ensure  
13 that electric system ratepayers share in any efficiencies that might result from the  
14 telecommunications operations.

15  
16 Specifically, on page 3, the Proposed Conditions identify the following purpose:

17 *The EPB has formed a telecommunications service division to achieve*  
18 *organizational and accounting separation from its electric power service*  
19 *operations. The ultimate goal of establishing rules and regulations to govern the*  
20 *EPB’s affiliate transactions is to ensure just and reasonable rates for the*  
21 *ratepayers of the electric utility. Insuring just and reasonable rates that remain*  
22 *subject to regulation requires guarding against cross-subsidy of the EPB’s*  
23 *ventures, principally its provision of telecommunications services. The rules and*

1           *regulations outlined in the following sections are intended to discourage the EPB*  
2           *from subsidizing the costs of the newly created telecommunications division by*  
3           *shifting costs to the activities of the electric system. Furthermore, the rules and*  
4           *regulations are crafted to assure that ratepayers share in any efficiencies*  
5           *generated from the joint use of facilities and services by the telecommunications*  
6           *division.*

7  
8   **Q: DID THE PARTIES IN THE CERTIFICATION PROCEEDING STATE**  
9   **WHETHER THE PROPOSED CONDITIONS ADDRESSED CROSS-SUBSIDY**  
10   **CONCERNS?**

11   **A:** Yes. In the oral summary of his pre-filed testimony, TCTA's Mr. Barta stated that the  
12   Proposed Conditions minimized the opportunity for anti-competitive cross-subsidy. Mr.  
13   Barta testified as follows:

14           *TCTA and EPB have worked together to develop a set of affiliate transaction*  
15           *requirements that we believe will minimize the opportunity to engage in an*  
16           *anticompetitive cross-subsidy.*

17  
18           October 13, 1998 Hearing Transcript, page 123, lines 3-4.  
19

20   **Q: THE PROPOSED CONDITIONS ALSO INDICATE THAT ELECTRIC SYSTEM**  
21   **RATEPAYERS SHOULD SHARE IN EFFICIENCIES GENERATED FROM THE**  
22   **TELECOMMUNICATIONS DIVISION. HAS THIS OCCURRED?**

1 A: Yes, we think so. We estimate that the telecommunications division will pay the electric  
2 division approximately \$1 million for shared services this year alone, including cost  
3 allocations for employee time, pole attachment rental and other matters. These shared  
4 services revenues have been generated without the need to add any new employees  
5 within the electric division to respond to telecommunications division requirements. To  
6 the extent that US LEC's requested relief competitively injures our telecommunications  
7 operations, then the telecommunications division may be required to scale back on some  
8 of these shared services, and our electric system ratepayers would lose the benefits of  
9 these efficiencies.

10  
11 **Q: WHAT DO YOU CONCLUDE FROM ALL OF THIS?**

12 A: EPB made the Authority and the participating intervenors aware that the  
13 telecommunications operation would be an "EPB" operation involving EPB's "goodwill"  
14 and "reputation," and the interested parties submitted the Proposed Conditions as a  
15 comprehensive resolution of cross-subsidy issues. Throughout the certification  
16 proceeding, EPB clearly stated that the telecommunications services would be services of  
17 EPB. EPB was the applicant. EPB relied upon its electric system managerial, technical  
18 and financial ability. EPB executives were witnesses, and ultimately, the Authority  
19 granted the certificate of convenience and necessity to "the Electric Power Board of  
20 Chattanooga." The use of the EPB name is consistent with the certification process and  
21 the comprehensive manner in which cross-subsidy concerns were addressed.

1 Q: IN LIGHT OF THE HISTORICAL BACKGROUND FROM THE  
2 CERTIFICATION PROCEEDING, PLEASE RESPOND TO MGM EXHIBITS  
3 2-9.

4 A: I do not think that any of these documents represent anticompetitive cross-subsidization.  
5 Each of these documents fairly depicts EPB's telecommunications operations as  
6 operations of EPB, which they are. These statements are similar to statements that EPB  
7 made to the Authority throughout the certification proceeding.

8  
9 Q: TURNING NOW FROM THE GENERAL CROSS-SUBSIDY ISSUE TO THE  
10 CODE OF CONDUCT, DOES THE SECTION OF THE CODE OF CONDUCT  
11 RELATING TO THE JOINT MARKETING OF REGULATED (ELECTRIC)  
12 AND NON-REGULATED (TELECOMMUNICATIONS) SERVICE APPLY TO  
13 MGM EXHIBITS 2-9?

14 A: No, not as we have understood that section of the Code of Conduct. As EPB has  
15 understood it, that section of the Code of Conduct was designed to address joint or  
16 bundled offerings of electric and telecommunications services "to customers" in a  
17 customer sales context. None of these exhibits fall into that category.

18  
19 US LEC has incorrectly taken a portion of that provision of the Code of Conduct out of  
20 context. US LEC has emphasized that the joint marketing of electric and telephone  
21 services is permitted "provided that the customer is informed of the separate identities of  
22 each [division]." However, US LEC has not quoted the applicable portion of the Code of  
23 Conduct in its entirety, nor has US LEC apparently considered the background behind

1       that provision. Read in its entirety and considered in the context of the certification  
2       proceeding, the provision takes on an entirely different meaning.

3  
4       Specifically, the “joint marketing” provision of the Code of Conduct provides:

5               *The electric system and the telecommunications division of the Electric Power*  
6               *Board of Chattanooga may jointly offer their respective products and services to*  
7               *customers provided that the customer is informed (a) of the separate identities of*  
8               *each and (b) that the products and services of the electric utility system are*  
9               *distinct and separately priced from the offerings of the telephone division and the*  
10              *customer may select one without the other.*

11  
12       Placed in proper context, it is apparent that this provision does not apply to  
13       advertisements or other materials that indicate that EPB offers electric and telephone  
14       services. Instead, this provision addresses the situation where EPB “jointly offers”  
15       electric and telecommunications services “to customers” – that is, joint sales efforts or  
16       efforts to bundle non-regulated (telecommunications) services with regulated (electric)  
17       services. In such a case, it might be important to inform a prospective customer of the  
18       separate identities of the EPB electric division and the EPB telecommunications division  
19       and, more importantly, to inform the customer that he or she may select one service (i.e.,  
20       electric service) without selecting the other service (i.e., telecommunications service).

21  
22       In the advertisements and other materials that have been submitted as MGM Exhibits 2-9,  
23       electric and telecommunications services are not “jointly offer[ed] . . . to customers.”



1 Neither is there any opportunity for a customer to “select” either service (much less both)  
2 as envisioned in subsection (b) of the “joint marketing” provision. Because there is no  
3 bundled or joint offering of electric and telecommunications services nor any opportunity  
4 for a customer to “select” electric and/or telecommunications services from EPB in these  
5 advertisements and other materials, there is no requirement that EPB make the  
6 disclosures under the “joint marketing” provision.  
7

8 **Q: WHEN WOULD THIS PROVISION OF THE CODE OF CONDUCT APPLY?**

9 A: If EPB were to jointly offer its telecommunications and electric services to a prospective  
10 customer, then EPB would be required to inform the customer that EPB’s electric  
11 operations are separate from its telecommunications operations, that the products and  
12 services of the electric division are distinct and separately priced from the offerings of the  
13 telephone division, and that the customer may select one service without the other.  
14

15 **Q: WAS THIS ISSUE ADDRESSED IN THE CERTIFICATION PROCEEDING?**

16 A: Yes, in the March 13, 1998 pre-filed rebuttal testimony of William J. Barta on behalf of  
17 TCTA, Mr. Barta raised the “joint marketing” issue in the context of the bundling of  
18 electric and telecommunications service. For example, on page 10, lines 5-9 & 18-23 of  
19 his pre-filed rebuttal testimony, Mr. Barta states:

20 *Q. What guidelines should the TRA follow regarding the joint marketing of*  
21 *electric and telecommunications services by the EPB?*

1           A.    *The bundling of monopoly electric services with competitive*  
2               *telecommunications services poses difficult regulatory challenges for the*  
3               *TRA . . . .*

4  
5               *The Tennessee Regulatory Authority should require that the EPB provide*  
6               *certain cost support in the event it jointly markets its electric and*  
7               *telecommunications services. The cost information submitted to the TRA*  
8               *in support of the tariff filing should document that the direct costs*  
9               *incurred to provide each service offering are being recovered as well as a*  
10              *proportionate share of the EPB's joint and common costs.*

11  
12              October 13, 1998 Hearing Transcript, page 114, line 5 – page 115, line 10.

13  
14              EPB has read the “joint marketing” provision within the Code of Conduct as referring to  
15              the bundling of electric system with competitive telecommunications service, and not to  
16              the advertisements and other materials such as the ones that US LEC has submitted in  
17              support of its Petition. In fact, the title to the applicable section of the Code of Conduct  
18              (the “Joint Marketing of Regulated [electric] and Nonregulated [telecommunications]  
19              Services) directly follows Mr. Barta’s description of joint marketing in the above  
20              question (the “joint marketing of electric and telecommunications services”).

1 **Q: DOES EPB HAVE ANY PLANS TO JOINTLY OFFER ITS ELECTRIC**  
2 **SERVICES AND ITS TELECOMMUNICATIONS SERVICES TO**  
3 **CUSTOMERS?**

4 A: No, not at this time. We presently maintain separate sales departments and sales  
5 personnel for our electric and telecommunications operations.  
6

7 **Q: DOES EPB HAVE ANY PLANS TO BUNDLE ITS ELECTRIC SERVICES WITH**  
8 **ITS TELECOMMUNICATIONS SERVICES?**

9 A: No, not at this time.  
10

11 **Q: IF THE "JOINT MARKETING" PROVISION DOES NOT APPLY, HOW IS**  
12 **ADVERTISING OF ELECTRIC AND TELECOMMUNICATIONS SERVICES**  
13 **HANDLED UNDER THE PROPOSED CONDITIONS?**

14 A: On pages 13-14 of the Proposed Conditions, there is a separate section relating to cost  
15 allocations for joint marketing expenses. That section provides, in relevant part:

16 *A very small dollar amount of marketing expense is anticipated to be of a joint*  
17 *nature. Such joint marketing expenses will be allocated between the*  
18 *telecommunications operation and the electric system using the ratio of marketing*  
19 *expenses directly assigned and attributed to telecommunications services as the*  
20 *numerator and the sum of the marketing expenses directly assigned and attributed*  
21 *to telecommunications plus the marketing expenses directly assigned and*  
22 *attributed to electric utility services as the denominator.*  
23

1   **Q:   HOW DO YOU EXPLAIN THAT BOTH THE “JOINT MARKETING” SECTION**  
2       **OF THE CODE OF CONDUCT AND THE JOINT ADVERTISING SECTION**  
3       **REFER TO “JOINT MARKETING” ACTIVITIES?**

4   A:   The choice of words in the “joint marketing” section of the Code of Conduct may not be  
5       the best and, in fact, may not even be very good. However, it appears that the different  
6       interpretations can be easily explained – in a manner consistent with EPB’s  
7       understanding of this provision – by a review of the history of the development of the  
8       Proposed Conditions.

10       As the Proposed Conditions were developed, EPB submitted a version of cost allocation  
11       guidelines along with the September 3, 1998 pre-filed testimony of Rose Baxter, and a  
12       copy of the version is attached as Exhibit HED-1. EPB’s version used “joint marketing”  
13       in the context of accounting for advertising and similar expenses on page 4, subsection k  
14       of the “Accounting for Revenues and Expenses” Section. That language is now included  
15       in Section VI of the Proposed Conditions. TCTA had previously proposed an alternative  
16       draft that did not include a section for accounting rules for revenues and expenses, but  
17       instead included a code of conduct. A copy of an early TCTA draft is attached as Exhibit  
18       HED-2. The TCTA draft, unlike the EPB version, discussed “joint marketing” in the  
19       context of bundled offerings of regulated (electric) services and nonregulated  
20       (telecommunications) services. The TCTA language now appears in the Code of  
21       Conduct section of the Proposed Conditions.

1 These two versions were merged and modified between September 3, 1998 and the filing  
2 of the first official version of the Proposed Conditions on September 8, 1998. In the  
3 process, both the accounting rules covering joint advertisements and the code of conduct  
4 rules for bundled service offerings ended up in the Proposed Conditions, and EPB did not  
5 notice that the words "joint marketing" were used in two different contexts  
6

7 With the benefit of hindsight, it would have been more precise to identify the Code of  
8 Conduct provision as "Joint Sales of Regulated and Non-Regulated Services," or  
9 "Marketing of Bundled Services," or some other title that reflected the sales orientation  
10 of that section. However, the history of the Proposed Conditions, the language of the  
11 entire "joint marketing" section of the Code of Conduct and the history of EPB's  
12 certification proceeding support these different uses of the same words in different  
13 contexts.  
14

15 **Q: PLEASE NOW RESPOND TO EXHIBIT MGM-1.**

16 A: This appears to be an article from the spring of 2000 regarding various  
17 telecommunications providers in and around the Chattanooga area. The article makes an  
18 inaccurate statement concerning the use of "EPB." The Electric Power Board of  
19 Chattanooga has used EPB since its inception. I have attached a copy of the cover of  
20 EPB's second annual report for fiscal year ending June 30, 1941 as Exhibit HED-3. The  
21 "EPB" logo appears in the middle of that report. Though not relevant to this proceeding,  
22 the article also states that EPB is providing "cable broadcasting services," which EPB has  
23 never provided.

1   **Q:    ON PAGE 2 OF HIS PRE-FILED TESTIMONY, MR. MOELLER STATES THAT**  
2       **“EPB TELECOM HARDLY NEEDS TO ADVERTISE.” IS THAT CORRECT?**

3   **A:**   No, it is not.   The market for business customers in Chattanooga is extremely  
4   competitive, and our sales force works very hard to earn new business and to retain  
5   existing business.   In fact, EPB’s telecommunications division has spent \$489,826  
6   through June 30, 2003 in advertising and marketing expenses.   We have spent many,  
7   many times that amount in compensation to and other costs for our sales force, who are  
8   responsible for directly marketing the services of EPB’s telecommunications operations.

9  
10   **Q:   ON PAGE 2 OF HIS PRE-FILED TESTIMONY, MR. MOELLER STATES THAT**  
11       **THE USE OF THE EPB NAME “OBVIOUSLY” GIVES EPB TELECOM AN**  
12       **ADVANTAGE OVER ALL OTHER LOCAL EXCHANGE CARRIERS. IS THAT**  
13       **CORRECT?**

14   **A:**   No, I do not think so.   I cannot imagine that the EPB name standing alone, for example,  
15   gives EPB’s telecommunications operations an advantage over BellSouth’s operations  
16   here in Chattanooga.   I would also point out that many carriers in the industry use names  
17   and reputations developed in other utility and similar monopoly-type businesses in their  
18   telecommunications operations.   For example, Duke Power Company has its own  
19   telecommunications affiliate, DukeNet, which uses the name “Duke” as well as the Duke  
20   Power logo.   Materials from the DukeNet web site are attached as Exhibit HED-4.  
21   Similarly, Time Warner Telecom uses the name of its parent Time Warner Cable.  
22   Charter Fiberlink of Tennessee, LLC uses the name of Charter Communications.

1 BellSouth uses the BellSouth name in its provision of long distance, Internet and other  
2 services and even in the name a CLEC.

3  
4 **Q: ON PAGE 3 OF HIS PRE-FILED TESTIMONY, MR. MOELLER STATES THAT**  
5 **“EPB TELECOM IS OBVIOUSLY TRYING TO DIFFERENTIATE ITSELF**  
6 **FROM OTHER CLECS SOLELY ON THE BASIS OF ITS AFFILIATION WITH**  
7 **EPB ELECTRIC.” IS THAT CORRECT?**

8 A: No, it is not. We have tried to differentiate EPB’s telecommunications operations on a  
9 number of bases. EPB owns its own fiber. EPB owns its own switch. EPB is beginning  
10 to utilize a fiber to the business solution in part of its service area. EPB has local  
11 telecommunications customer service representatives. EPB has a local billing department  
12 and uses local phone numbers for customer and billing inquiries. EPB has a  
13 telecommunications management and sales team that is active in the community. EPB  
14 has vehicles that are dedicated to the telecommunications operations. These are just a  
15 few of the things that make EPB different from many of the other CLECs in the market.

16  
17 **Q: FINALLY, PLEASE DESCRIBE THE IMPACT THAT US LEC’S REQUESTED**  
18 **RELIEF WOULD HAVE ON EPB’S TELECOMMUNICATIONS OPERATIONS.**

19 A: There would be an obvious and immediate negative impact on EPB’s  
20 telecommunications operations. EPB has spent four and one-half years building a  
21 telecommunications business, a reputation, and a customer base in the Chattanooga  
22 community. US LEC’s relief, if granted, would be a significant set back to these efforts.  
23 I believe that it would be confusing to our present customers, demoralizing to our sales

1 force, and costly to our operations in terms of EPB's lost investment and in its additional  
2 costs to develop a business under a new name. While it might be good for US LEC if the  
3 Authority denied EPB much of the benefit of four and one-half years' operating  
4 experience and investment in this community (the benefits of which we are now only  
5 beginning to see), neither EPB, nor our electric ratepayers, nor our present and future  
6 customers would benefit.

7  
8 Separate and apart from the competitive injury to EPB that US LEC's efforts would  
9 cause, US LEC's requested relief would be administratively difficult for EPB to  
10 implement. EPB has monthly meetings of its Board of Directors. These meetings are  
11 open to the public. The status of EPB's telecommunications operations is often  
12 discussed. The press is often present at those meetings. US LEC's request raises a  
13 number of problematic issues, such as whether EPB management and its Board could  
14 discuss EPB's telecommunications operations at Board meetings; whether EPB could  
15 continue to make financial or other reports to the City of Chattanooga that refer to its  
16 telecommunications operations; how EPB would handle audited financial statements and  
17 its communications with various agencies of State government; and how EPB would  
18 handle its reports to TVA. Perhaps these are the kinds of discussions that Ms. Montano  
19 references in her testimony as discussions "within EPB," but each of these meetings and  
20 each of these reports are public. Because EPB is a public body, there is no clear line  
21 between communications "within EPB" and communications to the public. It seems  
22 inevitable that these discussions and reports will, from time to time, be printed in the



1 paper, and the public will surely understand (as they should) that EPB's  
2 telecommunications operations are operations of a municipal electric system.

3  
4 Finally, any requirement that EPB change its name could be very confusing to our  
5 existing customers and to the public as a whole. If EPB were required to prepare new  
6 contracts with all of its customers, it would seem that these customers would be curious  
7 and perhaps confused and concerned about why their contracts were changing. If EPB  
8 were only required to use its new name on new contracts on a prospective basis, it would  
9 seem that EPB would have one class of customers that knew it by the EPB name and  
10 another class of customers that knew it by another name. This would raise several  
11 operational questions, such as how EPB would deal with simple things like customer  
12 billings and answering the phone within our customer service department.

13  
14 In the end, US LEC's request, if granted, would unjustifiably and unfairly harm EPB's  
15 telecommunications operations from a competitive standpoint; it would be  
16 administratively unworkable; and it would be very confusing to the public. The  
17 Authority should deny US LEC's request.

18  
19 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A:** Yes.

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

Henry Walker  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, Tennessee 37201

This 22nd day of December, 2003.



For: Strang, Fletcher, Carriger, Walker,  
Hodge & Smith, PLLC

**Exhibit HED - 1**

**ELECTRIC POWER BOARD OF CHATTANOOGA**  
**COMPLIANCE WITH SECTIONS 7-52-401 to 7-52-407**

The Electric Power Board ("EPB") is expanding its accounting systems and modifying portions of its accounting procedures to ensure its ability to comply fully with the prohibition against subsidies found in Section 7-52-402 and to comply with the requirements of Sections 7-52-402, 7-52-404, and 7-52-405 regarding imputing costs. Explained below are the methods that EPB will be using to properly separate telephone from electric accounting data and provide assurance that subsidization does not occur and costs are properly allocated.

**Overview**

The Electric Power Board is setting up a telephone service division to achieve organizational and accounting separation from its electric service operations. For this new telephone division, EPB is establishing a telephone accounting system that is separate from its electric accounting system. The new telephone system will enable telephone accounting transactions to be identified and recorded in a set of accounts distinct from the electric accounting records.

EPB has designed a chart of accounts for the telephone accounting system that utilizes the Federal Communications Commission's Uniform System of Accounts for Telecommunication Companies defined in the Code of Federal Regulations, Title 47, Part 32. EPB's use of these accounts will be in accordance with the Part 32 account definitions. EPB would like to note that it recognizes that FCC Part 32 accounting is not required of CLEC's but that Part 32 will be used to simplify telephone reporting to the Tennessee Regulatory Authority. All of the accounting entries recorded in these accounts will be directly related to telephone service or will be the result of an equitable and supportable allocation between telephone service and electric service.

Although all of the telephone accounting transactions, both direct and allocated, will originate in EPB's electric accounting system, they will be uniquely identified by means of predefined account number ranges or by assignment to a cost center specifically designated to accumulate telephone accounting activity. At month-end, these transactions will be summarized and transferred to the appropriate FCC accounts residing in the telephone accounting segment of the general ledger system. From the account balances maintained in this segment, the telephone accounting records will be available for reporting and historical analysis. The telephone financial statements prepared by EPB will present all of the accounting elements pertaining to its telephone operations and be independent of EPB's electric financial statements.

Described below are the accounting procedures EPB will be using to maintain its telephone and electric accounting records in conformance with the statutory requirements.

**Balance Sheet Accounting**

1. Cash – The telephone division will maintain bank accounts separate from those of the electric division. All telephone cash receipts from customers and other external parties will be deposited directly in the telephone division bank accounts. Telephone disbursements will be paid from electric division bank accounts, but the telephone division will reimburse the electric division for the total at month-end via electronic funds transfer. Services performed by the telephone division for the benefit of the other division will be handled by invoicing and paid just as with any external entity.

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2. **Receivables (External)** – Telephone receivables will be fully segregated from electric receivables. Both billings and payments for telephone service will be recorded directly to appropriate telephone receivable accounts as they occur.
3. **Payables (External)** – Telephone payables to external parties will be recorded in the electric division's accounting system and will be paid from electric division bank accounts. To maintain their telephone identity, these amounts will be recorded to telephone account numbers or in the telephone cost center. At month-end, a payable for the total reimbursement due to the electric division will be recorded in the telephone division's accounting system.
4. **Intracompany Receivables and Payables** – Each division will carry a receivable and payable account for intracompany transactions with the other division. These accounts will contain billings and other amounts designated for such fund transfers between the two divisions as will be needed to maintain a proper accounting separation of telephone and electric financial activity. Under this arrangement all intracompany transactions will be cash-based and will involve the transfer of funds. In determining the terms and conditions applicable to these intracompany receivables and payables, both divisions at EPB will utilize the same standards that are applicable to outside parties.
5. **Intracompany Loans** – The current market rate of interest will be applicable to loans made by one division to the other division which rate of interest will not be less than the highest rate earned by EPB on its invested funds.
6. **Materials** – All material assets will initially be recorded in the inventory accounts of the electric division. Material issues will either be directly assigned to telephone or electric or will be allocated if joint work is performed on a work order. Currently, the expenses of the provisioning and warehouse functions are loaded as an additive to the cost of each material item issued from inventory. This procedure will be applied to telephone material issues also.
7. **Plant Assets** – All plant assets will initially be recorded in the plant accounts of the electric division. The accounting procedures to be applied to plant assets that will be wholly or partially used to provide telephone service are explained below.
  - a. **Plant Dedicated to Telephone Service** – Some plant assets may be bought or constructed solely for telephone service purposes for which the telephone division will fully reimburse the electric division. Other plant assets, such as a fiber optic route, will be constructed to provide both telephone and electric service. Both types of assets will be recorded in the electric division's plant accounts when installed, and a determination will be made regarding the portion that will be used by the electric division. The remaining portion, including excess capacity, will be purchased by the telephone division (with the telephone division paying the proportionate cost as shown on the electric division books) and recorded as a telephone asset in the appropriate telephone plant account. In the electric division's plant records, this telephone plant portion will be reported as a contra-asset. On the electric books it will be referred to as Plant Dedicated to Telephone in order to specifically identify it as plant used to provide telephone service. Retirement accounting entries for plant that has been apportioned between telephone and electric plant records will be divided between telephone and electric according to the average installation apportionment for the specific type of plant asset.
  - b. **Plant Leased to Telephone Division** – Plant assets such as poles, land, and buildings, which are jointly used by both divisions but which are not easily physically divisible and assignable between the two divisions, will remain entirely in the electric plant accounts and be leased by the telephone division rather than purchased from the electric division. All leases will be calculated in accordance with applicable FCC Part 32 definitions. The use of poles for pole attachments, which is currently already leased to other entities, and any similar items will be

leased to the telephone division at the highest rate paid by an outside party for comparable pole attachments. For other leased plant, the electric division will develop a lease price that will fully cover the depreciation, maintenance, and other loaded costs of the asset used. For example, floor space in the electric buildings will be leased to the telephone division on a per-square-foot basis.

8. **Construction Work in Progress** – EPB currently uses a work order system very similar to those used by telephone companies. The cost of materials, labor, vehicles and heavy equipment, benefits, and other items that are required to complete a telephone construction job will be processed through this system and separately identified from the costs of electric work. The accounting procedures for determining and recording these costs are described below in the Accounting for Revenues and Expenses section.
9. **Depreciation** – All depreciable assets recorded in the plant accounts of the telephone division will be depreciated in the telephone accounting system. Depreciation rates will reflect industry normal life spans.
10. **Amortization** – Non-tangible assets and assets such as capitalized software will be amortized over industry normal life spans.

### **Accounting for Revenues and Expenses**

1. **Revenues** – Telephone service revenues will be recorded directly to telephone revenue accounts as they are earned.
2. **Labor Expenses** – Labor for field employees and contractors performing telephone operation and maintenance work will be directly assigned to telephone expense accounts at the time such work occurs or will be appropriately allocated if telephone and electric work are jointly performed on a work order. Labor for the majority of office personnel will be allocated between telephone and electric on the basis of percentages determined by time studies, which will be updated no less frequently than annually. As an example, the labor for accounting personnel will be divided between telephone and electric expense accounts according to a periodic analysis of the accounting functions performed by each employee. Such labor allocations will also be appropriately revised whenever work assignments or other pertinent circumstances change. Labor expenses for management and certain other administrative personnel will be allocated as a general and administrative expense as described in a later section.
3. **Labor-Related Expenses** – Training hours and time spent away from work due to sick leave, holidays, vacations, etc. will be accumulated monthly at the department level and prorated to the same accounts and in the same proportion as the department's labor dollars are charged. The allocation of payroll taxes and employee insurance to telephone and electric accounts is described in a later section.
4. **Other Expenses** – EPB's expense account numbers include very detailed functional codes for tracking specific expense categories such as supplies, membership dues, publications, postage, etc. Some expenses will be directly assigned to telephone, to electric, or to both if a basis for direct assignment can be established. An example would be travel, which can be directly assigned according to the specific circumstances of a trip taken. Other expenses such as departmental office supplies will be allocated, using labor dollars, to the same accounts where the department's labor is directly recorded, whether telephone, electric, or both. The following explains the basis for allocation of certain general and administrative expenses and of several other major expense categories that will need to be allocated between telephone and electric accounts:



- a. **Payroll Taxes** – EPB will allocate payroll taxes on the basis of total labor dollars.
- b. **Employee Insurance Expenses** – EPB expenses for the employee retirement plan, disability insurance, term life insurance, and other benefits that are directly related to labor expenses will be allocated using total labor dollars. Other expenses such as health and dental insurance that are not a function of labor dollars will be allocated on the basis of labor hours.
- c. **Other Insurance Expenses** – Property and liability insurance expenses will be allocated as appropriate. For example, the allocation for insurance on assets will be determined by the assets insured. Insurance on vehicles is currently distributed to accounts as part of the vehicle expense clearing process. Some insurance policies, such as general liability, have no directly assignable basis and will be allocated using total labor dollars.
- d. **Human Resources** – The labor and expenses for the operation of the Human Resources Department will be allocated to the telephone and electric divisions using total labor dollars.
- e. **Management and Other Administrative Personnel** – Labor and expenses that cannot be directly assigned to telephone and electric accounts will be allocated using total labor dollars.
- f. **Board of Directors' Expenses** – These expenses will be allocated using total labor dollars.
- g. **Services of City of Chattanooga** – EPB currently pays the City of Chattanooga a monthly fee for two City officials to sign checks issued by EPB. These fees will be allocated using total labor dollars.
- h. **Other General and Administrative Expenses** – Only a relatively small portion of these expenses cannot be directly assigned or have no easily determinable allocation basis. These expenses will be allocated between telephone and electric using total labor dollars.
- i. **Telephone Expense** – It is anticipated that telephone service for the electric division will be purchased from the telephone division. The electric division will be treated as any other telephone customer and will be billed at tariffed rates. These costs along with any other associated telephone costs are part of other General and Administrative Expenses and the telephone division will pay its share in accordance with 4(h) above.
- j. **Payment Processing** – For processing telephone payments, the electric division will charge the telephone division a market rate equivalent to the rate charged to other entities.
- k. **Marketing and Advertising** – Directly assignable marketing and advertising costs will be directly assigned. For example, a billboard presenting telephone service features will be assigned to the telephone division. A very small dollar amount of marketing expense is anticipated to be of a joint nature. Such joint marketing expenses will be allocated between the telephone and electric division using gross revenues. EPB does not currently permit other entities to have bill-stuffing privileges in its electric bills and does not intend to allow the telephone division to have such ability.
- l. **Vehicle Expense** – To allocate vehicle expenses to telephone accounts, EPB will continue to use the current system in which detailed records of the costs to operate and maintain vehicles are maintained. These vehicle expenses, including depreciation and insurance, are allocated to accounts in accordance with vehicle use, which is normally determined by the work performed by the employees to whom they are assigned. The expenses for vehicles

assigned to crews that perform construction and maintenance work are allocated to accounts on a cost-per-hour basis. For all other vehicles, the allocation basis is cost per mile.

- m. **Mapping System and Software** – EPB maintains a computerized mapping system. Like most of the other internally developed systems, the mapping system was directly expensed, and there is no accumulated capitalized amount to amortize. All expenses including modifying or updating the system or other expenses associated with mapping will be allocated between the telephone and electric divisions using the route miles of facilities mapped.
- n. **Service Restoration** – This is another software system for which the costs have been directly expensed as incurred. All expenses including modifying or updating the system or other expenses of the service restoration system will be allocated to the telephone and electric divisions on the basis of the direct labor of employees performing field repairs.

### **Subsidy Tests and Regulatory Reporting**

Statutory requirements stipulate that EPB make several adjustments to its financial data for the regulatory purpose of calculating any subsidy tests or for pricing. Accordingly, EPB makes the following proposal for reporting annually to the Tennessee Regulatory Authority:

1. EPB will report to the TRA its financial statement data, as recorded, in whatever format the TRA requires. This will provide the TRA with EPB's audited financial data.
2. EPB proposes to also send to the TRA a second set of financial statements reflecting the various imputed expenses required per statute. EPB anticipates the following treatment for such imputed and allocated expenses:

### **Dedicated Plant and Loan – Section 7-52-402**

Plant Costs	As noted above, the telephone division will pay the electric division for any dedicated electric plant and, therefore, this cost will not need to be imputed.
Interest	As noted above, the telephone division will pay the electric division market interest which will be greater than the interest cost required to be allocated. Accordingly, no interest cost will need to be imputed.

### **Taxes – Section 7-52-404**

Property Taxes	Computation will be net book value for taxable assets multiplied by the current City or County tax rate as appropriate. An offsetting adjustment will be made to remove any In Lieu Of Taxes currently paid by EPB, which are surrogate payments for property and other taxes.
Sales Taxes	Computation will be the purchases of taxable goods and services during the reporting period multiplied by the applicable sales tax rate. EPB will show such an amount as totally expensed and will not reflect that portions of it may have been capitalized.

**Other State and  
Local Taxes**

Computation will be based on applicable tax code.

**Federal  
Income Tax**

Calculations will involve using the current federal corporate income tax rate multiplied by the net taxable income of the telephone division. EPB will make adjustments and deferments to taxes as appropriate and as used by other entities. For example, taxes will be calculated using allowable tax depreciation rather than book depreciation.

**Pole Attachments and Right-of-Way Fees – Section 7-52-405**

**Pole Rentals**

As noted above, these fees will actually be charged to and paid by the telephone division and will not need to be imputed.

**Other Charges**

If a non-governmental corporation providing identical services as the telephone division is required to pay right-of-way fees, rentals, charges or payments imposed by state or local law, then corresponding computations will be calculated for the telephone division.

**Exhibit HED - 2**

**Electric Power Board of Chattanooga  
Affiliate Transaction Requirements  
Proposed By  
The Tennessee Cable Telecommunications Association**

**Purpose**

The ultimate goal of establishing rules and regulations to govern the Electric Power Board of Chattanooga's affiliate transactions is to ensure just and reasonable rates for the ratepayers of the regulated electric utility. Insuring just and reasonable rates that remain subject to regulation requires guarding against cross-subsidy of the EPB's nonregulated ventures, principally its provision of nonregulated telecommunications services. The rules and regulations outlined in the following sections are intended to discourage the EPB from subsidizing the costs of the newly created telephone division by shifting nonregulated costs to regulated activities. Furthermore, the rules and regulations are crafted to assure that ratepayers share in any efficiencies generated from joint use of facilities and services by the telephone division.

**Assignment and Allocation of Costs**

Tariffed services provided to the nonregulated telephone division shall be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account of the electric division for that service.

Costs assigned to and allocated between the electric division and the telephone division should be based upon the following principles:

**Directly Assignable Costs** - costs of assets and resources incurred exclusively for providing either regulated electric utility services or nonregulated telecommunications activities.

**Directly Attributable Costs** - costs of assets and resources incurred to provide both regulated electric utility services and nonregulated telecommunications activities that can be apportioned using direct measures of cost causation.

**Indirectly Attributable Costs** - costs of assets and resources incurred to provide both regulated electric utility services and nonregulated telecommunications activities which require an indirect measure of cost causation in order to relate the costs to the final objective.

**Unattributable Costs** - costs of assets and resources shared between regulated electric utility services and nonregulated telecommunications activities for which no causal relationship exists. These types of costs are accumulated and allocated to both regulated electric utility services and nonregulated telecommunications activities through the use of a general allocator.

**Electric Power Board of Chattanooga**  
**Affiliate Transaction Guidelines**  
**Proposed by the Tennessee Cable Telecommunications Association**  
**Page 2**

**Intracompany Loans** - The current market rate of interest will be applicable to loans made by one division to the other division which rate of interest will not be less than the highest rate earned by the Electric Power Board of Chattanooga on its invested funds.

**Taxes** - The Electric Power Board of Chattanooga will make tax equivalent payments equal to the state, local, and federal taxes which would be required to be paid for each fiscal year by a nongovernmental corporation that provides identical services.

**Transactions with Affiliates**

Charges for assets purchased by or transferred to the regulated electric utility division from the nonregulated telephone division shall be recorded in the operating accounts of the regulated electric utility division at the invoice price if that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the regulated electric utility division is not available, the charges recorded by the regulated electric utility division for such assets shall be the lower of their cost to the originating activity and the affiliated nonregulated telephone division less all applicable valuation reserves, or their fair market value.

Assets sold or transferred from the regulated electric utility division to the nonregulated telephone division shall be recorded as operating revenues, incidental revenues on asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with the Tennessee Regulatory Authority or in a prevailing price held out to the general public, the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff or prevailing price is applicable, the proceeds from such sales shall be determined at the higher of costs less all applicable valuation reserves, or estimated fair market value of the asset.

Services provided to an affiliate pursuant to a tariff filed with a regulatory authority shall be recorded in the appropriate revenue accounts at the tariffed rate. Services provided by the nonregulated telephone division to the regulated electric utility division when the same services are also provided by the telephone division to unaffiliated parties shall be recorded at the market rate. If the electric division provides substantially all of a service to or receives substantially all of a service from the telephone division which are not also provided to unaffiliated parties, the services shall be recorded at cost which shall be determined in a manner that complies with the standards and procedures of the apportionment of joint and common costs between the regulated and nonregulated operations of the Electric Power Board of Chattanooga.

**Code of Conduct**

**Regulatory Compliance** - The Electric Power Board of Chattanooga will be subject to all rules and regulations of the Tennessee Regulatory Authority in the same

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manner and to the same extent as other providers; including without limitation, rules and orders governing anti-competitive practices.

Treatment of Similarly-Situated Parties - The Electric Power Board of Chattanooga shall process all similar requests for the services of the regulated electric utility division and the nonregulated telephone division in the same manner and within the same time period whether requested on behalf of an affiliate of the Electric Power Board of Chattanooga or a third party.

Customer Information - Customer information obtained by the electric division of the Electric Power Board of Chattanooga shall not be provided to the telephone division or to third parties unless the customer to which the Customer Information relates has given express written authorization to do so and then such information shall be provided by the Electric Power Board of Chattanooga only to the extent authorized and only to the parties specifically authorized to receive it by the customer.

Billing and Collection for Nonregulated Services - In the event that the Electric Power Board of Chattanooga elects to include amounts due for its telephone division activities on the monthly bill of the regulated electric utility division, notice must be provided to third parties offering the same terms for billing and collection as provided to the telephone division. For this purpose, sufficient notice is deemed to be a public notice published in at least two newspapers of general circulation at a minimum of 60 days prior to including the amounts of the telephone division on the monthly bills. Furthermore, the customer receiving the consolidated bill must provide authorization to the Electric Power Board of Chattanooga to act as its agent for the purpose of billing and collecting amounts on behalf of the affiliated telephone division or a third party.

Promotional Inserts in Bills - In the event that the Electric Power Board of Chattanooga elects to insert any advertising or promotional materials on behalf of the telephone division into the envelope of the monthly bill of the regulated electric utility division, the Electric Power Board of Chattanooga shall permit any third party to insert advertising and promotional materials of the same general type into the envelope, after sufficient public notice, upon request on the same terms and on a fair and non-discriminatory basis. For this purpose, sufficient notice is deemed to be a public notice published in at least two newspapers of general circulation at a minimum of 60 days prior to including the advertising and promotional inserts of the telephone division in the envelope for the monthly bills.

Separate Telephone Numbers - The Electric Power Board of Chattanooga shall maintain separate telephone numbers for its regulated electric utility division and its telephone division.

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**Anti-Competitive Inducements** - The Electric Power Board of Chattanooga shall not state in any advertising, promotional materials, or sales efforts, that consumers who purchase products or services from its nonregulated telephone division will receive preferential treatment in the provision of services from its regulated electric utility division or that any other benefit will inure to customers resulting from its dealings with the telephone division.

**Sales References by Utility Personnel** - The personnel of the regulated electric utility division shall not specify a preference for any product or service of the nonregulated telephone division over like services of a third party.

**Joint Marketing of Regulated and Nonregulated Services** - The electric division and the telephone division of the Electric Power Board of Chattanooga may jointly offer their respective products and services to customers provided that the customer is informed (a) of the separate identities of each division and (b) that the products and services of the regulated electric utility division are distinct and separately priced from the offerings of the nonregulated telephone division and the customer may select one without the other.

**Reporting Requirements**

The Electric Power Board of Chattanooga shall report to the Tennessee Regulatory Authority on an annual basis:

- (a) all nonregulated divisions and/or affiliated companies;
- (b) all contracts entered into with affiliated divisions and/or companies, and all transactions undertaken with affiliates without a written contract;
- (c) the amount of affiliate transactions by affiliate by account charged;
- (d) the basis used to record affiliate transactions (i.e. book value, fair market value, tariff, fully distributed cost);
- (e) total costs allocated or charged back to each division; and
- (f) updates of the allocation factors used to allocate costs between the electric division and the telephone division.

The Electric Power Board of Chattanooga shall make available the books and records of the electric division and the telephone division and any affiliated company upon request of the Tennessee Regulatory Authority.



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The Electric Power Board of Chattanooga shall maintain books of account and supporting documentation in sufficient detail to permit verification of compliance with the cost assignment and allocation principles and the Code of Conduct approved by the Tennessee Regulatory Authority.

The Electric Power Board of Chattanooga shall continue to submit all reports that are currently filed with the Tennessee Regulatory Authority.

**Exhibit HED - 3**

# ELECTRIC POWER BOARD OF CHATTANOOGA

Chattanooga, Tennessee



Second Annual Report to the Board of Mayor  
and Commissioners of Chattanooga.  
Fiscal Year ended June 30, 1941.

# ELECTRIC POWER BOARD OF CHATTANOOGA

Chattanooga, Tennessee



Second Annual Report to the Board of Mayor  
and Commissioners of Chattanooga  
Fiscal Year ended June 30, 1941

**Exhibit HED - 4**

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